

23 September 2024

**Complaint reference:**  
23 018 395

**Complaint against:**  
Newark & Sherwood District Council

## **The Ombudsman's final decision**

Summary: Mr B complained the Council was slow to act when it acknowledged a statutory nuisance in 2023. We have found the Council at fault for a delay in beginning a formal statutory nuisance investigation and providing Mr B with conflicting information. The Council has agreed to apologise and make a symbolic payment to remedy the injustice caused by the faults.

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## **The complaint**

1. Mr B complained the Council was slow to act when it acknowledged a statutory nuisance in 2023. Mr B says the ongoing noise caused him to flee his home and impacted his mental health and wellbeing. He would like the Council to apologise, improve its procedures and pay compensation for his pain and suffering.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
3. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

## **How I considered this complaint**

4. I discussed the complaint with Mr B and considered the evidence he provided.
5. I made enquiries of the Council and considered its response.
6. Mr B and the Council had an opportunity to comment on the draft decision. I considered any comments I received before making a final decision.

## What I found

### Relevant Law and Guidance

7. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'.
8. For the issue to count as a statutory nuisance, it must:
  - unreasonably and substantially interfere with the use or enjoyment of a home or other property; and/or
  - injure health or be likely to injure health.
9. There is no fixed point at which something becomes a statutory nuisance. Councils rely on suitably qualified officers to gather evidence. Officers may, for example, ask the complainant to complete diary sheets, fit noise-monitoring equipment, or make site visits. Councils will sometimes offer an 'out-of-hours' service for people to contact, if a nuisance occurs outside normal working time.
10. Once evidence gathering is complete, a council will assess the evidence. It will consider matters such as the timing, duration, and intensity of the alleged nuisance. Officers will use their professional judgement to decide whether a statutory nuisance exists.
11. The law says that a potential nuisance must be judged on how it affects the average person. Councils cannot take action to stop something which is only a nuisance to the complainant because they have special circumstances, such as a medical condition which makes them unusually sensitive to noise or fumes.
12. Councils can also decide to take informal action if the issue complained about is causing a nuisance, but is not a statutory nuisance. They may write to the person causing the nuisance or suggest mediation.
13. If a council is satisfied a statutory nuisance is happening, has happened or will happen in the future, it must serve an abatement notice. If the nuisance is noise from premises, the council may delay issuing an abatement notice for a short period, to try to address the problem informally.
14. An abatement notice requires the person or people responsible to stop or limit the activity causing the nuisance. Failure to comply with an abatement notice is an offence, which can lead to prosecution and a fine.
15. A person who receives an abatement notice has a right to appeal it in the magistrates' court. If they can show the court they have done everything reasonable to prevent or minimise the nuisance, the court may decide the abatement notice is not appropriate.
16. The Ombudsman published the [Principles of Good Administrative Practice](#) in 2018. This guidance sets out the standards we expect from bodies in jurisdiction and stresses the importance of keeping proper and appropriate records.

### What Happened

17. In July 2022 Mr B sent a complaint to the Council about the noise coming from an entertainment property close to his home. The Council closed this complaint in August 2022 as Mr B reported no further issues. Mr B sent a further complaint in March 2023.
18. In response to the March 2023 complaint the Council asked Mr B to complete a noise diary. Mr B completed the diary sheets and the Council received these in April 2023.

19. In May 2023 the Council wrote to the entertainment property advising it had received a noise complaint. The letter included various effective controls the property could take to minimise noise from live music. It also detailed the Council's enforcement powers.
20. Due to Mr B being away in June, the Council installed noise recording equipment in Mr B's home in early July 2023. The Council collected the equipment two weeks later and listened to the audio files the day after collection.
21. Mr B has provided evidence of a phone call and text message he had with the Council which show the Council explained there were 5 incidences of noise on the recording which were intrusive to Mr B's property. The Council described the noise as completely unacceptable, and it told Mr B it would visit the entertainment property and it may serve a noise abatement notice due to the noise intrusion.
22. This information led Mr B to believe that the Council felt the noise he was experiencing was intrusive and unacceptable and he believed the Council was going to take action.
23. However, despite what it told Mr B during the telephone call, the Council told us it was not satisfied at this stage there was a statutory nuisance caused by noise from the entertainment property. The Council states the function room at the entertainment property was not in use during the time the sound recording was in place (although it appears music was audible in the recording). The Council has not provided any records of its decision making at this stage.
24. The Council arranged a meeting with the entertainment property at the end of July to discuss what steps could be taken to reduce the noise emitted from the property. The Council told Mr B this meeting was unsuccessful and asked him to submit a further noise complaint when the noise from the property continued.
25. At the end of August 2023 the Council installed noise recording equipment in Mr B's home. In September 2023, following consideration of these audio recordings the Council completed a noise assessment and determined the threshold for statutory nuisance was met. The Council issued an abatement notice the following day which gave the entertainment property three months to comply.
26. The Council remained in contact with Mr B and the entertainment property over the next three months. In early November 2023 Mr B advised the Council that noise from the property had remained excessive and offered to have noise recording equipment installed in his home again. The entertainment property confirmed it was making progress with noise prevention measures and work remained ongoing to comply with the abatement notice.
27. In early December 2023, Mr B submitted a complaint to the Council regarding delays in dealing with the noise from the entertainment property. The Council issued a stage one complaint response 10 days later. The Council apologised for the initial delays in formalising the nuisance investigation and advised the delay was due to the Council's attempts to liaise with the entertainment property and encourage it to implement noise reducing measures. The Council state that after these initial delays, there was no further fault in the way it completed the nuisance investigation.
28. The Council completed a site visit to the entertainment property in December 2023. This visit confirmed the entertainment property was taking noise prevention measures and completing extensive sound insulation work.
29. At the end of January 2024, the Council visited Mr B's property to discuss installing the noise recording equipment at his home again. The Council could not

make contact Mr B at this point. In February 2024, Mr B told the Council he no longer lived at the home impacted by the noise. The Council closed Mr B's complaint.

30. Mr B told us he moved out of his home due to the ongoing noise intrusion from the entertainment property and the impact this was having on his physical and mental health.
31. In April 2024 the Council contacted the new residents who advised they did not have any issues regarding noise from the entertainment property.

### **My Findings**

32. Despite telling Mr B the initial noise recordings picked up noise which was intrusive to Mr B's property, the Council failed to record its decision making after listening to the July 2023 noise recordings. We expect the Council to follow the Ombudsman's Principles of Good Administrative Practice and to keep sufficient records so this is fault which caused Mr B frustration, distress and uncertainty.
33. The Council delayed in formalising the nuisance investigation following its acknowledgement in July 2023 that noise from the entertainment property was intrusive to Mr B's home. It is not clear why Mr B needed to submit a third noise complaint in order for the Council to formalise the statutory nuisance investigation. This is fault which caused Mr B frustration, distress and uncertainty.
34. From August 2023 the Council took the correct steps to investigate the statutory nuisance and acted without fault once a statutory nuisance was confirmed.
35. The Council has since implemented a revised process that will see all complaints starting as a statutory nuisance investigation with its Licensing Enforcement Officer assisting in any informal resolution running alongside the noise investigation.

### **Agreed action**

36. Within one month of the final decision the Council will:
  - Provide an apology to Mr B for the distress caused by the faults identified. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The organisation should consider this guidance in making the apology I have recommended in my findings.
  - Make a symbolic payment of £200 to Mr B to recognise the loss of amenity and delay in formalising a statutory noise investigation between July and August 2023.
  - Make a symbolic payment of £150 to Mr B to recognise the distress and raised expectations caused by conflicting information from the phone call in July 2023.

### **Final decision**

We find the Council at fault. We have made recommendations to remedy the injustice caused by the faults identified.

### **Investigator's final decision on behalf of the Ombudsman**